

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

METROPOLITAN PROPERTY AND
CASUALTY INSURANCE CO.

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

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Civil Action No.: 04-10897GAO

ANSWER

COMES NOW Defendant, United States of America, by its attorneys,
Michael J. Sullivan, United States Attorney for the District of Massachusetts, and
Gina Walcott-Torres, Assistant United States Attorney for said District, and
answers Plaintiff's Complaint as follows:

1. Defendant is without knowledge or information sufficient to form a
belief as to the truth of the allegations contained in Paragraph 1, and therefore,
denies the same.

2. Defendant admits the United States of America is a governmental
entity. Defendant further admits that the United States Attorney's Office, Michael
J. Sullivan, United States Attorney, District of Massachusetts, U.S. Courthouse,
Suite 9200, 1 Courthouse Way, Boston, MA 02210, regularly represents
Defendant in legal matters. Except as expressly admitted herein, Defendant
denies the remaining allegations contained in Paragraph 2.

3. Defendant admits that Joanne D. Katsfanas was operating a
vehicle on Chapel Street on or about October 28, 2002. Defendant is without

knowledge or information sufficient to form a belief as to the truth of the allegation that Katsafanas is Plaintiff's subrogor, and therefore, denies the same. Defendant admits that Katsafanas' vehicle came into contact with a motor vehicle owned by and operated by an employee of the United States Postal Service. Except as expressly admitted or denied herein, Defendant denies the remaining allegations contained in Paragraph 3.

4. Defendant admits that Plaintiff submitted a completed Standard Form 95 and supporting documentation with the United States Postal Service on or about December 10, 2003. Defendant admits that the United States Postal Service denied Plaintiff's Administrative Claim by certified letter dated January 14, 2004. Except as expressly admitted herein, Defendant denies the remaining allegations contained in Paragraph 4.

Affirmative Defenses

1 Plaintiff's recovery, if any, is limited to the damages recoverable under the Federal Tort Claims Act.

2. Pursuant to 28 U.S.C. § 2675(b), Plaintiff is prohibited from claiming or recovering an amount against the Defendant in excess of that set forth in Plaintiff's administrative claim presented to the United States Postal Service.

3. Pursuant to 28 U.S.C. § 2402, Plaintiff is not entitled to a jury trial against the United States.

4. Plaintiff's Complaint fails to state a claim or any claim upon which relief can be granted against Defendant.

5. Plaintiff's damages and losses, if any, were solely and proximately caused by the negligence, carelessness or recklessness of Plaintiff's subrogor, Joanne Katsafanas.

6. The fault and negligence of Plaintiff's alleged subrogor in causing the accident must be compared against the fault and negligence, if any, of Defendant, and Plaintiff's recovery, if any, must be diminished in proportion to the fault and negligence of Plaintiff's alleged subrogor in causing the accident. Further, Plaintiff is prohibited from recovering any amount against Defendant if the negligence of Plaintiff's subrogor is determined to be greater than any fault of Defendant.

7. Pursuant to 28 U.S.C. § 2412(d)(1)(A), Plaintiff cannot recover attorney's fees from the United States Postal Service.

8. Pursuant to 28 U.S.C. § 2674, Plaintiff is proscribed from recovering any amount for pre-judgment interest against Defendant.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendant respectfully moves this Court to dismiss Plaintiff's Complaint, for its costs incurred herein, and for such further relief as is just and proper.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

Gina Walcott-Torres
Assistant U.S. Attorney
John Joseph Moakley U.S. Courthouse
1 Courthouse Way, Suite 9200
Boston, MA 02210
(617) 748-3369

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was mailed this 12th day of July 2004, to:

Richard Schlesinger, Esq., 11 Beacon Street, Suite 632, Boston, MA
02108, Attorney for Plaintiff.

Gina Walcott-Torres
Assistant U.S. Attorney